

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: : CASE NO. 16-57318
: : CHAPTER 13
: : JUDGE JOHN E. HOFFMAN, JR.
DOUGLAS J. BAXTER :
: :
DEBTOR. : :

OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

NOW COMES Heartland Bank (“Heartland”), a secured creditor in the above-captioned Chapter 13 bankruptcy case, by and through its counsel, and hereby objects to the Confirmation of the proposed Chapter 13 Plan (“Plan”) that was filed by Debtor Douglas J. Baxter (“Debtor”). Heartland objects to the Debtor’s proposed Chapter 13 plan on the following grounds:

FACTS

1. On or about November 9, 2001, Debtor executed and delivered to Heartland a Home Equity Variable Draw Agreement (“Note”) in the original amount of Ten Thousand and 00/100 Dollars (\$10,000.00). A true and accurate copy of said Note is attached hereto and fully incorporated herein as Exhibit “A”.

2. On or about November 9, 2001, and in order to secure the payment of the Note, Debtor executed and delivered to Heartland an Open-End Mortgage (With Future Advance Clause) (“Mortgage”), filed for record on November 19, 2001, with the office of the Franklin County Recorder at Instrument Number 2001111902677833. On February 7, 2003, Heartland and Debtor executed a Subordination Agreement (“Subordination”) filed for record on February 27, 2003, with the Office of the Franklin County Recorder at Instrument Number 200302270057936 by which Heartland agreed to subordinate its mortgage position to the Mortgage of Commonwealth United Mortgage ISAOA, ATIMA. Further, Debtor and his spouse Susan E. Baxter, executed a Modification of Note (“Modification”) dated December 30, 2011, in

which the principal amount was reduced from Ten Thousand and 00/100 Dollars to Nine Thousand Six Hundred and 00/100 Dollars (\$9,600.00). The Modification is secured by a Modification of Open-End Mortgage (“Mortgage Modification”) filed for record on January 26, 2012 with the Office of the Franklin County Recorder at Instrument Number 201201260011293. True and correct copies of the Debtor’s Note, Mortgage, Subordination, Modification, and Mortgage Modification are attached hereto and fully incorporated herein as Exhibits “B”, “C”, “D”, and “E” respectively.

3. The Mortgage, as modified, remains a valid and subsisting lien against the premises, identified as 3167 Alderridge Court, Dublin, Ohio 43017 (“Premises”), and there remains due and owing the sum of Nine Thousand Thirty Three and 53/100 Dollars (\$9,033.53) as of November 11, 2016, the day Debtor filed this bankruptcy, plus accruing interest at the rate set forth in the Note, plus all costs, advancements, and late fees.

4. Heartland’s Note provides for monthly payments of \$100.00 per month at 7.5% interest. Debtor’s Plan sets forth monthly payments of \$50.00 to Heartland which are insufficient to cover even the monthly interest on the obligation and fails to address any arrearages. Using the balance on the date Debtor filed his petition, without calculating additional interest or other charges, it would take Debtor over 180 months to pay this debt. The Note terms out prior to the completion of Debtor’s Plan and must be paid in full within the term of the Plan.

OBJECTIONS TO PLAN

5. Heartland objects to Debtor’s Plan because Debtor’s Plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a) (3).

6. Heartland's Note provides for monthly payments of \$100.00 per month at 7.5% interest. Debtor's Plan sets forth monthly payments of \$50.00 to Heartland which is insufficient to cover even the monthly interest on the obligation and fails to address any arrearages.

7. Heartland further objects to the confirmation of Debtor's Plan because of the amount of money to be paid into Debtor's Plan is less than the amount of Heartland's claim as properly valued and, therefore, Debtor's Plan modified the rights of Heartland under its Mortgage in violation of 11 U.S.C. § 1322(b)(2).

8. Heartland further objects to the confirmation of Debtor's Plan because the amount of money to be paid into Debtor's Plan is less than the amount of Heartland's claim as properly valued and, therefore, Debtor's Plan fails to provide the curing of the default under the Note and Mortgage as permitted by 11 U.S.C. § 1322(b)(3)

WHEREFORE, Heartland respectfully requests that confirmation of Debtor's proposed Chapter 13 plan be denied until such time as the proposed Chapter 13 plan is amended to comply with the United States Bankruptcy Code.

Respectfully submitted,

FISHER & SKROBOT, LLC

By: /s/ David A. Skrobot

David A. Skrobot (0018668)

Matthew J. Kunsman (0084239)

471 East Broad Street, Suite 1810

Columbus, Ohio 43215

Telephone: (614) 233-6950

Facsimile: (614) 233-6960

E-mail: dskrobot@fisherskrobot.com
mkunsman@fisherskrobot.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 11, 2017, a copy of the foregoing OBJECTION TO CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following parties:

Shannon M. Treynor
shannon.treynor@sbcglobal.net

Faye D. English
notices@ch13columbus.com

Adam Bradley Hall
PNC Bank
amps@manleydeas.com

Erin Marie Dooley
Ohio Dept. of Taxation
Erin.Dooley@mifsudlaw.com

United States Trustee
Southern District of Ohio
Ustpregion09.cb.ecf@usdoj.gov

The undersigned hereby further certifies that the foregoing OBJECTION TO CONFIRMATION OF DEBTORS' CHAPTER 13 PLAN was also served upon the following parties by ordinary U.S. mail, postage prepaid at Columbus, Ohio, this January 11, 2017:

Douglas J. Baxter
3167 Alderridge Court
Dublin, Ohio 43017

State of Ohio
Bureau of Worker's Compensation
c/o Ohio Attorney General
150 E. Gay St. – 21st Fl.
Columbus, Ohio 43215

Franklin County Treasurer
373 South High Street – 17th Fl.
Columbus, Ohio 43215

By: /s/ David A. Skrobot
David A. Skrobot (0018668)